UNITED
NATIONS

AT

Administrative Tribunal

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29 June 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 600

Case No. 576: CLERMONT

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero, Vice-President; Mr. Hubert Thierry;

Whereas at the request of Serge Clermont, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, extended to 30 November 1990, the time-limit for the filing of an application to the Tribunal;

Whereas, on 3 January 1991, the Applicant filed an application requesting:

> "Through the Tribunal, ... the upgrading of my post to a P-2 level as was done for the designers of the Postal Administration: also the adjustment of the post level should be retroactive to 1 January 1985."

Whereas the Respondent filed his answer on 20 February 1992;

Whereas the Applicant filed written observations on 26 February 1992;

Whereas, on 29 October 1992, the Tribunal requested the Respondent to provide the Applicant "with the analysis by the Compensation and Classification Service referred to in each case as one of the elements considered by NYGSCARC [New York General Service Classification Appeals and Review Committee] in making its recommendations on the level of the posts";

Whereas, on the same date, the Tribunal put further questions to the Applicant and also asked him "to advise the Tribunal whether there is any further information that he ...

wishes to be considered, which deals exclusively with the above analysis and the nature of the duties and responsibilities of the post, as set forth in the job descriptions to which that analysis was directed";

Whereas, on 3 November 1992, the Respondent submitted to the Tribunal the documentation requested and on 7 November 1992, the Applicant informed the Applicant that there was "no further information that he needs to be considered...";

Whereas, on 20 November 1992, the Executive Secretary of the Tribunal informed the parties that the Tribunal had decided to adjourn consideration of the case until its 1993 Spring session;

Whereas the facts in the case are as follows:

Serge Clermont entered the service of the United Nations on 22 April 1969, on a three month fixed-term appointment at the GS-3, step III level, as a Junior-Draftsman in the Architectural and Engineering Section of the Buildings Management Service of the Office of General Services. On 22 July 1969, he was granted a probationary appointment and on 1 April 1971, a permanent appointment. The Applicant was promoted to the GS-4 level, with effect from 1 April 1972 and to the G-5 level, as a Senior Draftsman, with effect from 1 April 1978. He was granted a special post allowance to the P-2 level, from 1 January 1981 through 31 May 1981 and his functional title was changed to Acting Associate Administrative Officer. The Applicant was promoted to the GS-6 level, with effect from 1 January 1985, with the functional title of Buildings Services Assistant and to the GS-7 level, with effect from 1 December 1992.

In July 1982, the International Civil Service Commission had approved the establishment of a seven-level grading structure (to replace the old five-level structure) for the General Service category in New York and promulgated job classification standards for the seven levels. As a result, all General Service posts in New York were classified under procedures set out in administrative instruction ST/AI/301 of 10 March 1983.

In accordance with the administrative instruction, a description of the post encumbered by the Applicant was prepared for initial classification and submitted to the Classification Service in November 1983.

On 13 June 1984, the Assistant Secretary-General, Office of Personnel Services (OPS) announced to the staff, in information circular ST/IC/84/45, the establishment of the Classification Review Group "to review the overall results of the classification exercise currently being undertaken in respect of posts in the General Service and related categories in New York". The Applicant's post was classified at the GS-6 level.

On 28 April 1986, the Assistant Secretary-General, OPS, informed the staff, in information circular ST/IC/86/27, "of the action taken with respect to the classification exercise for posts in the General Service ... categories at United Nations Headquarters and to outline future action, in particular with respect to the implementation of the results of the exercise and the related appeals procedure." NYGSCARC was established with effect from 16 May 1986, to hear appeals against the results of the classification exercise.

In a memorandum dated 13 June 1986, the Applicant appealed the initial classification of his post, on the grounds that the functions of his post were not properly described and submitted a revised job description dated 16 June 1986, which, in his view, reflected more accurately the duties and responsibilities of his post.

The Assistant Secretary-General for the Office of Human Resources Management (OHRM[1]), submitted the Applicant's case to NYGSCARC for advice on the basis of information circular ST/IC/86/27 Annex II, subparagraph 10(c). NYGSCARC reviewed the case and confirmed classification of the post at the GS-6 level.

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[1] Successor of OPS.

The Assistant Secretary-General, OHRM, approved this recommendation on 21 January 1987. The Applicant's promotion to the G-6 level was made retroactive to 1 January 1985.

In a memorandum dated 14 May 1987, to the Assistant Secretary-General, OHRM, the Applicant appealed the classification decision following the review and recommendation by NYGSCARC. He argued that the job description of the post "was manipulated by reassigning functions to a P-3 post during the time period that the initial classification exercise was being carried out and returning the functions to the post after the classification review was completed". He added that the "duties returned to me seemed fit for the P-3 post."

As the initial appeal had not been reviewed in accordance with the procedure specified in subparagraph 10(b) of Annex II of information circular ST/IC/86/27, the case was resubmitted to NYGSCARC after the procedure had been corrected.

NYGSCARC reviewed the appeal at its fourth meeting on 15 March 1990. Its findings and recommendation read as follows:

> "Based upon its review of the revised job description submitted as part of the initial appeal, the information provided by the appellant in his memoranda of appeal, the analysis provided by the Compensation and Classification Service which confirmed the initial classification decision, the Committee concluded that the functions of the post corresponded to the GS-6 level depicted in the General Service Classification Standards. Accordingly, the Committee recommends that the post be maintained at the GS-6 level in the Building Related occupation".

In a memorandum dated 4 June 1990, the Assistant Secretary-General, OHRM, informed the Applicant that he had approved the recommendation by NYGSCARC.

On 25 September 1990, the Applicant sought the Secretary-General's agreement to submit an appeal to the decision to classify his post at the GS-6 level, directly to the Tribunal under

article 7.1 of the Tribunal's Statute. On 5 October 1990, the Assistant Secretary-General, OHRM, informed the Executive Secretary of the Tribunal that:

> "Under the circumstances of this case, the Secretary-General is of the opinion that submission of the dispute to the New York General Service Classification and Review Committee satisfies the requirement that a dispute be submitted to 'the joint appeals body' set out in article 7, paragraph 1, of the Administrative Tribunal Statute. Alternatively, the Secretary-General would agree to the direct submission of [the Applicant's] application to the Administrative Tribunal."

On 3 January 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Respondent incorrectly classified the Applicant's post at the GS-6 level, instead of at the P-2 level.

2. A sizeable portion of the Applicant's functions were reassigned to a P-3 post when the classification review was in progress. Those same functions were returned to his post after the classification review was completed.

Whereas the Respondent's principal contention is:

The Respondent's discretionary decision with regard to the classification of the Applicant's post was properly taken, following an independent review by a specialized appeals body.

The Tribunal, having deliberated from 7 June to 29 June 1993, now pronounces the following judgement:

I. The Applicant's post was classified at the GS-6 level. The Applicant appealed this classification and, as a consequence, it was reviewed by NYGSCARC. The latter recommended that the

Applicant's appeal be rejected. The Respondent adopted this recommendation by a decision dated 4 June 1990.

II. In his letter of appeal dated 14 May 1987, the Applicant stated that he had appealed the initial decision to classify his post at the GS-6 level, on the ground that the job description on which NYGSCARC had based its recommendation, had been manipulated, omitting several functions he performed. He had submitted a new and accurate job description but, in March 1990, when NYGSCARC re-examined his case, it recommended that the classification at the GS-6 level should stand.

III. On 25 September 1990, the Applicant sought the Secretary-General's consent to apply directly to the Tribunal. The consent was given on 5 October 1990.

IV. Although the Applicant did not challenge the procedure followed before NYGSCARC, the Tribunal noted a flaw, since the report of the Compensation and Classification Service to NYGSCARC, the document on which NYGSCARC relied to reach its conclusion, had not been shown to the Applicant. He, therefore, was deprived of any possibility of commenting on it. To cure this procedureal flaw, the Tribunal, on 5 November 1992, ordered the Respondent to make this document available to the Applicant. After its receipt, the Applicant informed the Tribunal that: "there is no further information that ... needs to be considered."

V. The Tribunal, therefore, considers that the procedural flaw referred to above has had no detrimental effect on the Applicant. He was not prevented from subsequently putting forward everything he deemed necessary to support his case.

VI. The Applicant contends that the classification of his post was based on a manipulated job description. Posts similar to his had been classified at a higher level. The Tribunal notes that,

contrary to the Applicant's claim, the minutes of NYGSCARC's meeting held 15 March 1990, show that it took into consideration the new job description provided by the Applicant when it reviewed his case.

VII. The Tribunal has consistently held that it cannot substitute its judgement for that of the Respondent in job classification matters and that its task is confined to ascertaining whether under all the circumstances, the Respondent has acted within his reasonable discretion, and due process has been observed. (Cf. Judgement No. 597, Colayco (1993), paras. II and V.)

VIII. In this case, the Tribunal finds that there were no improprieties in the exercise of the Secretary-General's discretion and no errors affecting due process, the procedural flaw noted in paragraph IV above, having been duly remedied.

IX. For the foregoing reasons, the application is rejected.

(Signatures)

Jerome ACKERMAN
President

Luis de POSADAS MONTERO
Member

Hubert THIERRY
Member

Geneva, 29 June 1993

R. Maria VICIEN-MILBURN
Executive Secretary